

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

NICKOLA GIANAKE,  
Plaintiff,

v.

JPMORGAN CHASE BANK,  
*et al.*,  
Defendants.

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CIVIL CASE NO. H-11-2075

**MEMORANDUM AND ORDER**

This case is before the Court on Defendant JPMorgan Chase Bank's Motion to Dismiss or, in the Alternative, Motion for More Definite Statement ("Motion to Dismiss") [Doc. # 4]. Plaintiff Nickola Gianake neither filed a Response nor requested additional time to do so.<sup>1</sup> Having reviewed the record and applied governing legal authorities, the Court **grants** the Motion to Dismiss, but will allow Plaintiff an opportunity to file an amended complaint.

In March 2007, Plaintiff obtained a loan from American Mortgage Network, Inc. to purchase a home in Harris County, Texas. Plaintiff alleges that JPMorgan Chase Bank, N.A. ("Chase") "subsequently financed" the purchase of the property.

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<sup>1</sup> Pursuant to the Local Rules of the United States District Court for the Southern District of Texas, failure to respond to a motion is taken as a representation of no opposition. S.D. TEX. R. 7.3, 7.4. Nonetheless, the Court has reviewed Chase's Motion to Dismiss on its merits.

It is undisputed that the promissory note evidencing the loan and the corresponding deed of trust are currently held by Chase. The loan went into default. Attempts to modify the loan were unsuccessful, and foreclosure proceedings were initiated.

Plaintiff filed this lawsuit in Texas state court to stop the foreclosure. Plaintiff does not, however, identify any cause of action against Chase. In the “Probable Right to Relief” section of her complaint, Plaintiff alleges that she believes “she has paid more payments than the defendants are prepared to give her credit for” and that “Defendants have miscalculated the amount of the debt based upon Plaintiffs records.” *See* Original Petition and Request for Temporary Restraining Order (“Original Petition”), attached to Notice of Removal [Doc. # 1], p. 4. Plaintiff also states that she has not been able to participate in the Home Affordable Modification Program (“HAMP”).<sup>2</sup> *See id.* at 4-5. Plaintiff does not assert a cause of action against Chase based on these allegations and, instead, simply requests that the foreclosure be enjoined.

Under Texas law, to obtain preliminary injunctive relief, the plaintiff must plead, *inter alia*, a cognizable cause of action against the defendant sought to be

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<sup>2</sup> Several federal district courts have held that there is no private cause of action under HAMP. *See, e.g., Dugger v. Bank of Am.*, 2010 WL 3258383, \*2 (E.D. Mo. Aug. 16, 2010); *Zeller v. Aurora Loan Servs., LLC*, 2010 WL 3219134, \*1 (W.D. Va. Aug. 10, 2010); *Marks v. Bank of Am.*, 2010 WL 2572988, \*\*5-7 (D. Ariz. June 22, 2010). The Court is aware of no legal authority to the contrary.

enjoined. *See Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204, 211 (Tex. 2002). Because Plaintiff does not assert any causes of action in her Original Petition, Chase's Motion to Dismiss is well-taken and must be granted. In the interests of justice, however, the Court will allow Plaintiff to file an amended complaint that satisfies the pleading requirements applicable to cases in federal court. Accordingly, it is hereby

**ORDERED** that Chase's Motion to Dismiss [Doc. # 4] is **GRANTED**. It is further

**ORDERED** that on or before **July 28, 2011**, Plaintiff shall file an Amended Complaint that satisfies the pleading requirements for complaints in federal court. Plaintiff shall identify each cause of action, allege the factual basis for each cause of action separately, and include only those causes of action recognized under Texas or federal law. Plaintiff is cautioned that failure to file a proper Amended Complaint by the July 28, 2011 deadline will result in final dismissal of this lawsuit.

SIGNED at Houston, Texas, this 7<sup>th</sup> day of **July, 2011**.

  
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Nancy F. Atlas  
United States District Judge